

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2005-63-C - ORDER NO. 2006-199
MARCH 28, 2006

IN RE: BellSouth Telecommunications, Inc. – Transit)
Traffic Tariff 2005-50)
)
)

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina on the complaints of various parties pursuant to the filing of Transit Traffic Tariff 2005-50 by BellSouth Telecommunications, Inc. (BellSouth) under S.C. Code Ann. Section 58-9-576 (Supp. 2005).

Transit Traffic Tariff 2005-50 was filed with the Commission on February 2, 2005. Subsequently, various Petitions to Intervene and/or Complaints were filed by the South Carolina Telephone Coalition (SCTC), United Telephone of the Carolinas (United), Sprint Spectrum, L.P, Sprint Communications L.P., AT&T Communications of the Southern States, LLC (AT&T), South Carolina Cable Television Association (SCCTA), Southeastern Competitive Carriers Association (SECCA), and ALLTEL South Carolina, Inc. (ALLTEL). The Complaints were noticed in accord with the instructions of the Commission's Docketing Department. Order No. 2005-269 allowed the withdrawal of the Petition and Complaint filed by the Southeastern Competitive Carriers Association.

Subsequently, a hearing was held on August 22, 2005, in the offices of the Commission, with the Honorable Randy Mitchell, Chairman, presiding. M. John Bowen, Jr., Esquire, and Margaret M. Fox, Esquire, represented the South Carolina Telephone Coalition, John J. Pringle, Jr., Esquire, and Gene Coker, Esquire, represented AT&T. Robert D. Coble, Esquire, represented ALLTEL. Frank Ellerbe, Esquire, represented the SCCTA. Benjamin P. Mustian, Esquire, represented the Office of Regulatory Staff (ORS). Patrick Turner, Esquire, represented BellSouth. It was announced at the beginning of the hearing that BellSouth had reached agreements with all parties, except for ALLTEL, regarding the issue of transit traffic. Accordingly, the only parties who presented witnesses in the case were ALLTEL and BellSouth. ALLTEL presented the testimony of Jayne Eve. BellSouth presented the testimony of Kenneth Ray McCallen.

II. DISCUSSION

Transit Traffic Tariff 2005-50 was filed under the provisions of S.C. Code Ann. Section 58-9-576 (Supp. 2005), which provides for an alternative regulation plan for an electing company. Under the provisions of this plan, an electing local exchange carrier (LEC) files tariffs which are presumed valid and, for price increases and new services, become effective fourteen days after filing. Section 58-9-576 (B) (6). Further, another part of this section states that “The LECs shall set rates for all other services on a basis that does not unreasonably discriminate between similarly situated customers. All of these rates are subject to a complaint process for abuse of market position...” Section 58-9-576 (B) (5). Accordingly, the burden of proof in this process falls on the complainant to show unreasonable discrimination and/or an abuse of market position. ALLTEL did

not meet its burden of proof in this case, so its complaint must be dismissed under the statutory standard. Further, all remaining complaints against BellSouth in this matter should also be dismissed, since the complainants and BellSouth were able to negotiate commercial agreements.

Transit traffic is traffic that neither originates nor terminates on BellSouth's network, but that is delivered to BellSouth by a telecommunications service provider (TSP) that originated the traffic so that BellSouth can deliver the traffic to the TSP that will terminate the traffic. Tr., McCallen at 75. The tariff provisions apply only in the absence of a commercial agreement between the TSP and BellSouth. Tr., Eve at 34.

ALLTEL presented the testimony of Jayne Eve, Director-State Government Affairs. Ms. Eve testified that the proposed tariff is discriminatory between similarly situated customers, and that the Commission should reject the proposed transit rate, or, in the alternative, require that the Proposed Tariff be modified to reflect the Intrastate Access Tandem Switching rate of \$.00074 per minute of use. Further, Ms. Eve stated that the tariff should not be applicable to Internet Service Provider (ISP) traffic. Tr. at 32-26.

In rebuttal testimony, Ms. Eve asserted that this matter should be the subject of commercial negotiations between BellSouth and ALLTEL and that ALLTEL would continue to negotiate with BellSouth on this matter, although ALLTEL is concerned that approval of this tariff will end any chance of fair negotiations. Ms. Eve further states that the BellSouth Transit rate does not compare to rates that BellSouth charges the interexchange carriers. Ms. Eve noted that companies such as ALLTEL are similarly

situated to the IXCs with respect to the network elements required to deliver transit traffic. Tr. at 38-44.

Kenneth R. McCallen testified on behalf of BellSouth. McCallen stated that BellSouth's transit tariff provides a service option for TSPs that do not have a contractual agreement addressing transit service in place with BellSouth and that do not have direct interconnection for exchanging traffic with other TSPs. McCallen testified that BellSouth does have a tariffed service known as Access Tandem Switching, but that service only provides a switching function. He further stated that in contrast, BellSouth's transit service provides transport, and that an originating TSP using BellSouth's transit service also uses port/termination and switching functions at BellSouth's tandem switch. McCallen went on to describe the mechanics of how BellSouth provided transit service under different scenarios. Tr. at 72-91.

An examination of the entire record in this case reveals that ALLTEL simply did not meet its burden in this case. ALLTEL alleges that BellSouth's proposal would establish a default rate that would only be applicable to ALLTEL. The rates in the tariff were \$.003 per minute initially, and \$.006 per minute as of January 2006. ALLTEL cites a similar docket in Louisiana in which the resultant transit rates were set at \$.001 for the first year of the agreement, increasing gradually to \$.002 in the fifth year. Posthearing Brief of ALLTEL at 7. Although a copy of the Louisiana Commission's Order was attached to ALLTEL's Brief, we were not able to determine how that Commission's reasoning was applicable to the case before us.

No “unreasonable discrimination” was shown by ALLTEL. Our Order No. 2002-2 held that if a Company can state a good reason for a pricing differential on a service between similarly situated customers, then the different rates are reasonable. BellSouth presented evidence to show that ALLTEL is different from other carriers, and therefore, may not necessarily be entitled to the same rates. BellSouth notes that ALLTEL does not act as an IXC in South Carolina. Therefore, it is not entitled to the same transit rate as an IXC. BellSouth asserted that ALLTEL charges different rates for the same services, citing specifically the areas of residential and business telecommunications services. ALLTEL also attempted to show unreasonable discrimination by stating that BellSouth’s transit service is not priced identically to what ALLTEL views as BellSouth’s analogous access service. BellSouth points out that the difficulty is that when access charges have been lowered, BellSouth usually derives another benefit therefrom, such as a Universal Service Fund (USF) withdrawal or other offset. No such offset is present here. See Post-Hearing Brief of BellSouth Telecommunications, Inc. Although ALLTEL makes a number of points, it makes no attempt to address the cost of the service in an attempt to show that the pricing constitutes unreasonable discrimination. Without this information, this Commission cannot make a determination that the pricing involved in the transit traffic tariff constitutes unreasonable discrimination.

Further, although ALLTEL suggests that BellSouth’s pricing of the transit service constitutes an “abuse of market position” under S.C. Code Ann. Section 58-9-576 (Supp. 2005), BellSouth points out that a recent amendment to that statute states that “[r]ates that exceed the [TSLRIC] of an offering...do not constitute an abuse of market position.”

ALLTEL has offered no evidence to show that the price of the transit traffic tariff is below TSLRIC. In fact, ALLTEL's witness specifically admitted that it was not. Tr. at 49. Lastly, ALLTEL states that the transit tariff should not apply to ISP-bound traffic, because this traffic is interstate in nature. BellSouth asserts that this should not stop BellSouth from being able to charge for the intrastate portion of the call. We agree with BellSouth's position on this last issue.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

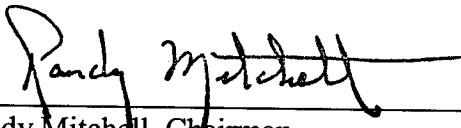
1. BellSouth operates under the alternative form of regulation set forth in S.C. Code Ann. Section 58-9-576 (Supp. 2005).
2. This statute provides that BellSouth's tariffs are presumed valid and become effective seven days after filing for price decreases and fourteen days after filing for price increases and new services.
3. BellSouth filed its transit tariff on February 2, 2005. The tariff was presumed valid as of February 16, 2005.
4. As a party challenging the tariff, ALLTEL (or any other Intervenor-Complainant) bears the burden of overcoming the statutory presumption of validity.
5. All Intervenor-Complainants were able to reach a commercial agreement on this issue at the time of the hearing on this matter, except ALLTEL.
6. ALLTEL failed to meet the burden of proof mandated by S.C. Code Ann. Section 58-9-576 (Supp. 2005), in that it did not show unreasonable discrimination, nor did it show an abuse of market position.
7. ALLTEL's complaint should be dismissed.

8. All other remaining complaints in this matter should be dismissed, in that the other parties came to agreements on the transit traffic matter with BellSouth.

IV. ORDER

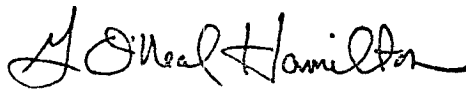
1. ALLTEL's complaint in this matter is dismissed.
2. All remaining complaints in this matter are dismissed.
3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Randy Mitchell, Chairman

ATTEST:



G. O'Neal Hamilton, Vice-Chairman

(SEAL)